been around this business probably a little longer than you, you try to restrict your answer to a responsive reply to the question, and it will be easier for all of us. I am just trying to get clear the import of the answer that you gave to Mr. Christy. You did say that if somebody came in to buy flowers, you weren't concerned with what name was given.

The Witness: No.

The Court: Nor, were you concerned with whether the name given was actually that—actually and usually used by the person who gave you the name?

The Witness: Well—

The Court: I wanted to find out whether or not that was true in the case where you were extending credit and you say it would not be.

The Witness: No. We do. We do check credit of our accounts, but when we bought the business we took (1424) over a certain number of accounts.

The Court: I understand that.

The Witness: That is why I say—

The Court: That is a different thing. But somebody coming in to buy flowers and asking for credit, he would be required to give a name—

The Witness: That is correct.

The Court: —that you could check.

The Witness: That is correct.

Q. And if you carried an account for the name given by the purchaser, you would just charge the flowers to that account, is that right? A. That is correct.

The Court: When did you say you came into the business?

Albert M. Rady—for Government—Cross
Grace Takata—for Government—Direct

The Witness: In '46.

The Court: '46?

The Witness: That is right.

The Court: You were in charge of the business at the time this entry was made?

The Witness: That is right.

The Court: Very well.

Mr. Christy: I have no further questions, your Honor.

Cross Examination by Mr. Fennelly:

(1425) Q. Did you testify before the Grand Jury that returned the indictment in this case? A. I did not.

Mr. Christy: Thank you, Mr. Rady.

(Witness excused.)

Mr. Christy: The Government calls Miss Grace Takata.

GRACE TAKATA, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Miss Takata, will you keep your voice up just a little so the last man in the jury may hear you?

Where do you live? A. 557 Netherland Avenue, Bronx.

Q. Where are you employed, Miss Takata? A. Irene Hayes.

Q. Where is that? A. 273 Park Avenue.

Q. Is that a florist shop? A. That is right.

Q. Were you ever employed at a florist shop called Annenberg & Erickson? A. I was.

Q. And do you remember approximately when you worked there? A. From '44 to '47.

Q. While you were there at Annenberg & Erickson did you take orders from customers? A. Yes, I did.

Q. You took them in the store and you took them (1426) over the telephone, is that correct? A. That is correct.

Q. And you would charge the flowers purchased to the name given you by the customer, is that correct? A. That is right.

Q. Miss Takata, do you know Frank Costello? A. Today, yes.

Q. Would you point him out in the court room, please? A. The gentleman standing right there.

The Court: Let the record show that the witness indicated a man and that the defendant stood up.

And that is the man, who stood up, is the man you knew as Frank Costello, is that right?

The Witness: That is right, man. I know as Frank Costello today.

The Court: Very well.

Q. Miss Takata, were you at Annenberg & Erickson in the month of April, 1947? A. In April '47? Yes.

Q. You were? Did you ever sell flowers to Frank Costello while you were employed at Annenberg & Erickson, which is the man you have just identified? A. Well, he himself never came in.

Q. Did you know an account that was carried under the name of C. Frank? A. Yes, I did.

Q. Was that account, which was carried under the (1427) name C. Frank the account of Frank Costello?

Mr. Fennelly: I object to it as a conclusion of the witness.

The Court: You may examine on that.

I will allow you to answer that question.

The Witness: Will you repeat that?

The Court: Yes, repeat the—was the account that was carried under the name of C. Frank the account of Frank Costello?

The Witness: Well—

The Court: If you know.

The Witness: Well, as I says, he himself didn't come in.

Mr. Fennelly: I can't hear the answer.

The Court: I didn't hear it either.

Will you try to speak up a little louder? I know you are not used to having to speak out loud to a group like this, but it is necessary for the gentleman in the jury box, the last one, to hear you and it is quite necessary that the gentleman at the second table hear you.

Try to speak up a little louder.

Q. Miss Takata, what was the name that Frank Costello used when he charged—

Mr. Fennelly: Just a minute.

(1428) Q. (Continuing) —flowers at Annenberg & Erickson?

The Court: Sustained.

A. I charged the flowers—

The Court: Just a minute. No. That means the

question is objectionable and you must not answer.

The Witness: All right, thank you.

Mr. Fennelly: I would request, your Honor, to admonish the Prosecutor not to ask questions in that form.

The Court: Mr. Christy has not required any admonition up to now, and if it was improper in form, I am sure it was a slip and not deliberate.

Go ahead, Mr. Christy.

Q. Miss Takata, you stated you were familiar with the account of C. Frank; that there was an account carried in Annenberg & Erickson under the name of C. Frank? A. There was.

The Court: Do you know when that account was first opened?

The Witness: It was there when I went there.

The Court: And that was in 1944?

The Witness: That is right.

The Court: At any time while you were there between 1944 and 1947 did you come to know the person or persons represented by that account in your books?

The Witness: No. It is only recently.

(1429) The Court: Very well.

Q. Did you on occasion charge flowers to the account of C. Frank? A. I did.

Q. And that was in 1947? A. That is right.

Q. Who was the person who charged flowers to the account of C. Frank? A. Different people.

Q. Do you know who they were? A. No, the man—

Mr. Fennelly: I object.

The Court: Sustained.

Mr. Fennelly: The witness has already testified

The Court: Sustained.

Mr. Fennelly: The defendant did not come into the store and order flowers.

The Court: I have sustained the objection. The witness hasn't answered.

Q. Do you know who charged flowers to the account of C. Frank?

The Court: Sustained.

Mr. Fennelly: I object to it.

Q. Has Frank Costello ever bought any flowers at Irene Hayes where you are presently employed? A. He has.

Q. He has. Have you ever seen him in the store there at Irene Hayes? A. Once.

Q. Pardon? A. Once.

(1430) Q. Did the man you have identified in court as Frank Costello ever purchase flowers at Annenberg & Erickson and charge it to the account of C. Frank?

Mr. Fennelly: I object to it, your Honor.

The Court: I think the witness has already said that he never came into the store, meaning the store of Annenberg & Erickson.

Mr. Fennelly: I now ask your Honor to admonish the Prosecutor as to his constant efforts. Your Honor has sustained the objection repeatedly.

Mr. Christy: Your Honor, she has testified that she took orders over the telephone.

The Court: She did. You may examine appropriately to determine what she knows about that, if she does.

Q. Did the man you have identified in court—

The Court: Oh, now, please, you had better lay a foundation for it, Mr. Christy, before you get into that. You are faced now with the problem of identifying voices on telephones, and that is not so easily gotten over as the form of your question suggests.

Q. Miss Takata, did you testify that you had never seen the defendant in the store of Annenberg & Erickson? A. At that time when I was there I did not know who he was.

Q. Did you ever see the defendant in the store (1431) at Annenberg & Erickson while you were there?

Mr. Fennelly: The witness has testified already that she didn't.

A. I did not know the man. The people that come in, you don't know the customers; people come off the street.

The Court: What he is trying to ask you now is if you know who he is now.

The Witness: Today, yes.

The Court: If you now recall whether or not you ever saw the man in the store at the time you worked there.

The Witness: He has been in while I was there, but I didn't know him then.

The Court: You didn't know him then?

The Witness: I didn't know him then.

Q. You didn't know him—

The Court: When you say he was in there, you mean you know that through some other means?

The Witness: Well, I recognize the face, but at that time I did not know who he was.

The Court: No. But are you now saying that this man is the same as the person that you saw at some past time, even though at the past time you did not know who he was?

(1432) The Witness: Well, he could have been in, but, as I say, I don't know all the customers.

The Court: Very well. Then the answer is no.

The Witness: Because I mean, you don't remember all the customers.

The Court: No, we are not quarreling with you. We are just trying to find out what your recollection is.

Go ahead.

Mr. Christy: May I rephrase that question?

The Court: You may.

Q. While you were at Annenberg & Erickson do you ever remember seeing the defendant Frank Costello in that store, whether or not you knew who he was by name or not? A. I cannot remember all—

Mr. Fennelly: Excuse me. I submit the witness has answered before.

The Court: The witness has answered now that she cannot remember.

A. I cannot remember all faces.

The Court: You can't remember that one. That is, the only face you can tell—

Mr. Christy: Your Honor, the answer to these questions is something of a surprise to me. May I have liberty to cross-examine the witness?

The Court: You may, if you claim surprise.

(1433) Q. Miss Takata, have you ever been down to the United States Attorney's office before? A. Yes, I have.

Q. Have you talked to me on two occasions down in that office? A. That is right.

Q. And have I discussed with you the testimony that you were to give and asked you certain questions?

Mr. Fennelly: I must raise objection, your Honor.

The Court: I didn't hear you, Mr. Fennelly.

Mr. Fennelly: I object to the Government attempting to impeach their own witness.

The Court: Overruled.

Mr. Fennelly: It seemed obvious to me that there was no element of surprise to Mr. Christy.

The Court: That is a matter of judgment, where I think mine is the one that controls. That is the ruling that I have to make. You are entitled to your own view. I think it is quite obvious that the Prosecutor is surprised.

And you may proceed, Mr. Christy.

Mr. Christy: Thank you, your Honor.

Q. And we discussed this matter of the account that Annenberg & Erickson carried under the name of C. Frank? A. You have.

(1434) Q. Did you at one time, in response to a request from the Treasury agent give them some information about this account? A. Well, all I said was that he has charged to the account—

The Court: The question is, did you do that? Did you give some agent of the Treasury some in-

formation about this account? The answer is yes or no or you don't remember.

The Witness: I don't remember.

Q. Did you ever furnish a Treasury agent named Peter Geisler with information and papers? A. I did.

Q. And did you do that in response to a request as to the account or as to the purchases of Frank Costello at Annenberg & Erickson?

Mr. Fennelly: Just a minute. I object to that, your Honor, Mr. Christy putting into his question facts and evidence in a backhanded way, where the witness has testified that she had no transaction with the defendant.

The Court: I think that is probably so, Mr. Christy. I will sustain the objection to that last question.

Q. Miss Takata, when you were down in this office discussing this matter with me I asked you if you had ever seen the—

Mr. Fennelly: Excuse me.

(1435) The Court: There is an objection to that. You may ask the witness what she said or whether or not it is the fact that she said this or that, and if she made any statement in writing you may confront her with it.

Q. Did I ask you—

The Court: No.

Q. Miss Takata, when you were down in this office did

you tell me or did you give me some information about this account? A. Well, I don't remember.

By the Court:

Q. Do you remember being down in the office? A. Yes, I do.

Q. Do you remember talking to Mr. Christy? A. I do, your Honor.

Q. Do you remember, generally what it was you talked about? A. Well, he asked me if—

Q. Well, do you remember whether it was about this account or not? A. The account, yes.

Q. So, the fact is that you did talk to him about the account? A. That is right.

Q. You do remember that? A. Yes, I do, your Honor.

(1436) Q. Very well. Now, do you remember any of the details that you talked about? A. Well, the only detail is that later I found out C. Frank, the Frank C. charged to Frank, to C. Frank, is that what you want?

Q. No, it is not a question of what he wants; it is a question of what do you remember. What, if anything, did you tell Mr. Christy when you were in the United States Attorney's office about this account, which is called C. Frank? A. That there was such an account.

Mr. Fennelly: Excuse me. If I may object to your Honor's question.

The Court: Very well. I will sustain it.

By Mr. Christy:

Q. I show you Government's Exhibit 321 for identification, and I ask you if you have seen that sheet in my office. A. Yes.

Q. Prior to the— A. Yes, I have.

Q. And I showed you that name "C. Frank" on this sheet, Government's Exhibit 321, did I not? A. That is right.

Q. And did I ask you about that account? A. You did.

Q. And what did you tell me about that account?

Mr. Fennelly: I object to it, your Honor, unless (1437) they produce a transcript of the statement they have taken from the witness which would show anything contradictory.

The Court: I will allow the question. I will overrule the objection.

Q. What did you tell me about that account, Miss Takata? A. Well, later I found out that Mr. Frank Costello charged to the account of C. Frank.

Mr. Fennelly: I move to strike out the answer.

The Court: I grant that motion, and I direct the jury to disregard that answer.

Now, Mr. Christy, I have given you a good bit of leeway here and this witness has been examined at considerable length, but that answer means nothing, particularly in the light of the witness's answers with respect to what her knowledge was.

Now, I direct you, ladies and gentlemen, to pay no attention to that answer at all.

Mr. Christy: May I have just a minute, your Honor?

The Court: Oh, surely.

(Mr. Christy confers with Mr. MacMahon.)

Mr. Christy: I have no further questions, your Honor.

Grace Takata—for Government—Cross
Charles F. Kocornik—for Government—Direct

(1438) *Cross Examination by Mr. Fennelly:*

Q. Did you testify before the grand jury that returned the indictment in this case? A. I did not.

Q. And did you ever see me before in your life? A. Never.

Q. Did you ever see Mr. Delaney, sitting at the counsel table here (indicating), ever before in your life? A. No.

Mr. Christy: No further questions, your Honor.

The Court: Very well.

The Witness: You are through with me?

The Court: Yes, you may go.

The Witness: Thank you, your Honor.

(Witness excused.)

Mr. Christy: The Government calls Mr. Kocornik.

CHARLES FREDERICK KOCORNIK, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Kocornik, where do you live? A. West Orange, New Jersey.

Q. Where are you employed, sir? A. Philco Distributors, Inc., Long Island City.

Q. How long have you been with them? (1439) A. Twenty years.

The Court: What distributors?

The Witness: Philco.

The Court: Philco?

The Witness: Yes, sir.

Q. Where is the Philco Distributors located? A. Long Island City.

Q. Are you the order department manager at Philco? A. I am.

Q. You are familiar with the books and records of Philco, are you? A. Yes, sir.

Q. Mr. Kocornik, I show you Government's Exhibit 307 in evidence, which is an order for the installation of an air conditioner, and I call your attention to the top part of that which indicates that a Philco 76-E air conditioner was installed in the apartment of Mrs. Costello at 115 Central Park West in July, 1949.

The Court: What is that exhibit number, Mr. Christy?

Mr. Christy: 307, your Honor, in evidence.

The Court: Thank you.

Q. Does Philco publish the price lists for the various models of its air conditioners? A. They do.

Q. And have you brought one with you? A. Yes; I have.

(1440) Q. May I have it, sir? A. (Witness hands.)

(Marked Government's Exhibit 322 for identification.)

Q. Mr. Kocornik, I show you Government's Exhibit 322 for identification and I ask you if that is a Philco air conditioner price list for the month of July, 1949. A. It is.

Q. And does it have on there the list prices of air conditioners of the model 76-E? A. It does.

Mr. Christy: The Government offers Exhibit 322 for identification, your Honor.

The Court: May I see 307 and 307-A, please?

Mr. Christy: Yes, your Honor (handing).

Mr. Fennelly: I object to it as incompetent, irrelevant and immaterial. It appears that these are only suggested list prices of dealers and, also, there is no proof of purchase at the moment.

The Court: I didn't hear that last part.

Mr. Fennelly: I say, also, that at the moment there is no proof that it was purchased.

Mr. Christy: There is proof that it was installed, your Honor.

The Court: Sustained.

Q. Again referring to Government's Exhibit 307 in evidence which shows the installation of the air (1441) conditioner, do you know what the price of that air conditioner was in 1949? A. $399.50.

Mr. Fennelly: I object to it, your Honor, and move to strike it out.

The Court: Well, it is a little bit late; your objection came after the answer was in. I will allow it to stand.

Mr. Christy: No further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Q. And the price you gave was for what Philco model? A. Model 76-E.

Q. And was the price you gave the suggested list price— A. That is correct, sir.

Q. —by the manufacturer? A. That is right, sir.

Q. That is not necessarily the price? A. Customarily so, yes.

Q. You don't fix prices that dealers must charge, do you? A. No, sir.

Q. So they could charge for anything less? A. That is right, sir.

Q. And if anybody received a gift of it, it wouldn't cost anything, would it? A. I guess that is right.

(1442) Mr. Christy: Thank you, Mr. Kocornik.

(Witness excused.)

Mr. Christy: The Government calls Mrs. David Thal.

The Court: What is that last name?

Mr. Christy: Thal, T-h-a-l, your Honor.

SYLVIA THAL, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Miss Thal, where do you live? A. 320 Central Park West.

Q. Are you employed at Wilma Gowns, Inc.? A. Yes.

Q. Where is that? A. 4 West 57th Street.

Q. How long have you been with Wilma Gowns? A. Over 10 years.

Q. Are you the credit manager there? A. Yes.

Q. Wilma Gowns sells ladies dresses, is that right? A. Ladies apparel.

Q. Did Mrs. Loretta Costello ever purchase any clothes from Wilma Gowns? A. Yes.

Q. Mrs. Thal, when a sale is made to a customer the sales slip is prepared with some copies, is that correct? A. Yes.

(1443) Q. The original goes in one file? A. Right.

Q. And the copy goes to the customer? A. Yes.

Q. And you retain a copy as a shipping copy? A. That is right.

Q. And the final copy is, the tissue copy is destroyed very shortly? A. Yes.

Q. Is that correct? A. Yes.

Q. Do you also maintain ledger sheets for customers? A. For charge customers.

Q. Was Mrs. Costello a charge customer? A. No.

Q. Did she always pay cash? A. She always paid.

Q. Well, was it in cash? A. It would be cash or check.

Q. Cash or check? A. Yes.

Q. But you didn't carry a ledger sheet for her account? A. No.

(Marked Government's Exhibit 323 for identification.)

Mr. Christy: Mark those as one exhibit.

(Marked Government's Exhibit 323-A for identification, 5 sales slips.)

Mr. Christy: Mark that as one exhibit.

(Marked Government's Exhibit 323-B for identification.)

Mr. Christy: And that as one.

(1444) (Marked Government's Exhibit 323-C for identification.)

Mr. Christy: May the record note that Government's Exhibit 323- for identification consists of 13 sales slips, some of which have tickets attached to them.

The Court: What are we up to now? C?

Mr. Christy: Yes, your Honor. Government's Exhibit 323-C consists of 2 slips.

Q. Mrs. Thal, I show you Government's Exhibit 323 for identification and I ask you if those are sales slips of the account of Mrs. Costello of 115 Central Park West. A. Yes.

Q. And are they in a folder marked "1948"? A. Yes.

Q. And are those sales slips and attached alteration tickets all in the year 1948? A. Yes.

Q. I show you Government's Exhibit 323-A for identification and ask you if those are sales slips for Mrs. Costello's account in the year 1949. A. Yes.

Q. They are? A. Yes.

Q. And Government's Exhibit 323-B for identification, if that is an audit copy of a receipt of the money. A. Yes.

Q. And Government's Exhibit 323-C for identification, if those are sales slips for alteration charges— A. Yes.

(1445) Q. —in the year 1949? A. Right.

Q. And Government's Exhibit 323-B is also dated 1949, is that correct? A. Right.

Q. Now, all the sales slips in Government's Exhibit 323 for identification are duplicate sales slips kept by Wilma Gowns in the regular course of its business, are they not? A. Yes.

Q. And it is the regular course of the business to keep these sales slips? A. Yes.

Q. And 323-A are audit copies of sales slips which are also records of the business? A. Yes, sir.

Q. And 323-B and 323-C are likewise records kept by Wilma Gowns in the regular course of its business? A. Yes.

Q. It is the regular course of Wilma Gowns to keep these four exhibits as part of their business? A. Yes.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 323 for identification, 323-A, B and C for identification in evidence.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(Marked Government's Exhibits 323 through 323-C in evidence.)

Q. Mrs. Thal, I call your attention to Government's (1446) Exhibit 323 in evidence and to one of the sales slips in there which has the date on the back of 2-11, and was in the 1948 folder. The number at the top of that sales slip is 158726, is it not? A. Yes.

Q. I call your attention to another one, another sales slip in the same exhibit, on which the date is January 27, 1948, and the number at the top of that is 158721. A. Yes.

Q. So that they were taken from the same book, these two sales slips? A. Right.

Q. So that the first one which I showed you would have been in the year 1948? A. Definitely.

Q. I call your attention to another sales slip in Government's Exhibit 323 in evidence on which appears the date March 30th on the back, and the number on that one is 2038-41, is that correct? A. Yes.

Q. I call your attention to another sales slip, same ex-

hibit, in which the date on the back is March 23, 1948. A. Right.

Q. And the number at the top of that one is 2038-31. A. Right.

Q. So they were both taken from the same book? A. Right.

Q. There is no question about the one headed 2038-41 (1447) being in the year 1948, is there? A. No.

Q. Government's Exhibit 323-B in evidence is an audited copy of receipt showing that Mrs. Costello paid the sum of $253.55—

Mr. Fennelly: I object.

Q. —on November 22, 1949, is that correct? A. Yes.

Q. And you were unable to locate the accompanying sales check? A. Right.

Q. All of these sales slips in Government's Exhibits 323, 323-C and 323-A have been paid, have they not? A. Yes.

Q. And I ask you if from the exhibits you have computed the annual totals in the years '48 and '49. A. I have it here.

Q. In 1948 was the figure $2,660.45? A. $2,660.45, right, yes.

Q. And in 1949 ~~$1,267.93~~— A. I think it is 03 cents.

Q. 03 cents? A. Yes.

Q. $1,267.03? A. Yes.

Q. Mrs. Thal, do you remember a Treasury agent coming into Wiima's about two years ago? A. Yes.

Q. And did he ask you for the records?

Mr. Fennelly: I object.

The Court: I will allow it.

Did he ask you for the records?

(1448) The Witness: Of Mrs. Costello's purchases, yes.

Q. He did? A. Yes.

Q. Did you give him those records? A. I let him look at them.

Q. But you made all the records that you had of Mrs. Costello's account available to him? A. Yes.

Q. And those included the sales slips and what other records you had such as audited copies of receipts, is that correct? A. Yes.

Q. You have produced these records in accordance with a subpoena, have you not, Mrs. Thal? A. Yes.

Q. And these are all the records that you could find, is that correct? A. Yes.

Q. Did Wilma Gowns or the office of Wilma Gowns undergo some alteration in the management of the office sometime ago? A. Yes, we changed the size of it.

Q. During the course of these alterations were certain records thrown out? A. Yes.

Q. They were? A. Yes.

Q. And the alterations in the store occurred subsequent to the date that the Treasury agents came in? A. Right.

Q. And looked at the records? A. Right.

Q. Is that correct? A. That is right.

Q. Did another Treasury agent or did the same (1449) Treasury agent come to Wilma Gowns within the last four or five months to make a search for those records that had been thrown out? A. Another one came.

Mr. Fennelly: Just a minute. I object to it, to what the Treasury agent did come for.

The Court: Did he come to see if he could have another look at the records?

The Witness: Yes.

The Court: Which had been looked at the first time?

The Witness: Yes. I couldn't find those.

The Court: Those were records which you say were disposed of during the alteration period?

The Witness: Those and other records were thrown away.

The Court: And that included some that had been seen—

The Witness: That the first man saw.

Q. When he came the first time, did you give him or make available to him the records for the year 1947? A. With all the others.

Q. And have you made a search in your store for the records for the year 1947? A. Yes.

Q. And were you able to find any of the sales slips or alteration slips or any other records at all? (1450) A. No.

Mr. Christy: I have no further questions.

May I substitute photostats at a later date for these records?

The Court: Yes, you may.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No.

Q. What was the name of this agent who was your visitor? A. Well, now, there were two separate ones two separate times.

Q. What was the name of the first one? A. I think that the name was Handelsmith, something, or Handelsman, or Handel-something.

Q. Handelsman or Handelsmith? A. I am not exactly sure. I think Handelsman.

Q. It wasn't either one of these two gentlemen in the court room here? A. No.

Q. What was the name of the second one? A. I don't remember.

Q. On Government's Exhibit 32-A, which is a bill dated December 13, 1949, you sent that dress to Mrs. Costello care of D. Geigerman in New Orleans, Louisiana, didn't you? A. Yes.

(1433) Mr. Fennelly: That is all.

Mr. Christy: I have no further questions, your Honor.

Thank you, Mrs. Thal.

The Witness: You are welcome.

(Witness excused.)

The Court: Are we going to be able to do anything in ten minutes, Mr. Christy?

Mr. Christy: I am not sure, your Honor.

The Court: We will get started anyway.

Mr. Christy: All right.

The Government calls Louis Handelsman.

LOUIS HANDELSMAN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Handelsman, where do you live? A. 1033 Freeman Street, Bronx, New York.

Q. Where are you employed, sir? A. I am employed as a revenue agent with the Bureau of Internal Revenue.

Q. How long have you been with the— A. I have been with the Bureau approximately five years.

(1452) Q. In May, 1952, Mr. Handelsman, were you acting as a special agent for the Treasury Department? A. Yes, I was.

Q. In the performance of your duties did you have occasion to go to a store known as Wilma Gowns at 4 West 57th Street? A. I did.

Q. Did you speak to anybody when you got there? A. I saw Mrs. Thal, the head bookkeeper, I believe.

Mr. Fennelly: I move to strike out what he believes.

The Court: Overruled.

Q. Did you get certain records while you were there? A. I made two trips in May, 1952, to Wilma Gowns. The first time I asked for records pertaining to the purchases made by Mrs. Loretta Costello of 115 Central Park West, and for the years 1947 up to 1950, and I was told that they would have to be located and to come back in about a week.

I called her the following—the early part of the following week and was told to come up on, I think, Thursday, May 8th, and at that time I went up and was given numerous packages of cards, from Mrs. Thal, which I proceeded to copy.

Q. What were the records that were given to you? A. There were, I believe, they were duplicate (1453) copies or carbon copies of sales slips of purchases made by Mrs. Costello from the store.

Q. And did you go through each and every one of these? A. I copied every one, starting with the earliest year and working up to the—as the years progressed, from '47, '48, '49, and so on.

Q. And from these records made available to you did you prepare a transcript in your own handwriting? A. I did.

(Marked Government's Exhibit 324 for identification.)

Q. Mr. Handelsman, I show you Government's Exhibit 324 for identification, consisting of 2 sheets with penciled notations and I ask you if that is the transcript prepared by you while you were at Wilma Gowns from the records made available to you and reflecting the purchases on the account of Mrs. Loretta Costello— A. This is the—

Q. —for the year 1947. A. This is the transcript I prepared from the records that were given to me.

Q. And that is for the year 1947? A. For the year 1947.

The Court: Did you do the work of making that up at the office of Wilma Gowns?

The Witness: Yes, I did that. I was—Mrs. Thal (1454) gave me a desk there at the place and I proceeded to copy it at the desk.

Q. Did you have occasion to go back to Wilma Gowns sometime last year to look for the records from which you had made your transcript? A. I went back to Wilma Gowns, I think it was last November, the early part of November I went back there and asked Mrs. Thal for the remaining—for the sales slips which I had copies, and we searched the place for them. There had been a change in the room up there; I believe—

Mr. Fennelly: Just a minute.

The Witness: Pardon me.

Mr. Fennelly: I object to this witness testifying about a change.

The Court: What?

Mr. Fennelly: I object to the witness testifying about there had been a change.

Mr. Christy: He was there, your Honor.

The Court: When you went back the second time was the physical layout the same as it had been when you were there before?

The Witness: No. Some of the file cabinets—

The Court: Go ahead, then.

The Witness: Some of the file cabinets had been (1455) moved and removed, and a workroom for cutting—

The Court: You need not tell us about that. They were changed. You asked for the records, and did you get the records?

The Witness: No; we looked in every drawer that was available, every cabinet—

The Court: You actually helped in the search yourself?

The Witness: I participated in it personally. And we came across some of the records, but those for the year 1947 weren't available.

The Court: We won't be available until a quarter after two either.

Now, remember the instruction I have given you, ladies and gentlemen, don't talk about the case among yourselves or with anybody else, and keep your minds completely open.

Now, from time to time I suppose all of us read newspapers, and if you see anything in the newspapers about this case I ask you not to read it, but if you have read anything about it or if by chance you overlook this instruction, I very seriously direct you now to pay no attention to any comments or evaluations or anything else that you see in news-

papers or magazines or that you might hear on the radio. I don't know whether (1456) there is any space on television for it now, but if you do, don't pay any attention to it either.

As I told you at the opening of the trial, the only thing that is important in the line of evidence is what comes from witnesses on the stand, and observations made by anybody, counsel or anybody else, are not evidence. They may be argument, but they are not evidence. You are not supposed to pay attention to argument of anybody, and counsel here, and certainly don't pay any attention to anything that looks like testimony unless it comes from the witnesses here. Keep your minds completely open.

(Recess until 2.15 p.m.)

(1457) Afternoon Session

(Jury not present.)

Mr. MacMahon: Your Honor, at this time I wish to correct a typographical error in the record. I have spoken to Mr. Fennelly about it and he agrees that it is a typographical error.

On page 1332 of the redirect examination of Mr. Wolf, the third question down,

"Q. And the source was what? A. From wagers" —w-a-g-e-r-s—and not "wages,"—not w-a-g-e-s as appears. The answer should read "From wagers, the net result of wagers that he had made for the year."

The Court: What page is this?

Mr. MacMahon: 1332, your Honor.

The Court: Wagers, yes.

Thank you.

Mr. MacMahon: May the record be so corrected?

The Court: It may. I have made the correction in this copy I have.

(Jury enters court room.)

LOUIS HANDELSMAN, resumed.

Direct Examination by Mr. Christy (Continued):

(1458) Q. Mr. Handelsman, before the recess I believe that you had identified Government's Exhibit 324 for identification as the transcript prepared by you from the records given to you at Wilma Gowns, is that correct? A. That is right.

Q. Is that transcript accurate as far as any records which were shown to you are concerned? A. Yes.

Q. And that is in your own handwriting, is it not, sir? A. Yes, sir.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 324 for identification in evidence.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: You made this at the first visit?

The Witness: Yes, sir.

The Court: And that was when?

The Witness: That was, I believe, May 8th. It was May 8, 1952.

The Court: Objection is overruled.

(Marked Government's Exhibit 324 in evidence.)

Q. Mr. Handelsman, I show you Government's Exhibit 324 in evidence and refer to the second page. Have you computed a total of the charges listed on that transcript—payments listed on that transcript? A. $4,912.44.

(1459) Q. And is that—

The Court: What's that? Four thousand?

The Witness: $4,912.44.

Q. And is that total in your handwriting, too? A. Yes, sir.

Q. And that figure $4,912.44 represents the payments by Mrs. Costello for the year 1947, is that correct? A. That is correct.

Mr. Christy: No further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Mr. Handelsman, did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Q. And at the time you made this investigation you were a special agent or acting as a special agent— A. I was an acting—

Q. —for the Bureau of Internal Revenue? A. I was an acting special agent for the Bureau of Internal Revenue.

Q. And have you the transcript, too, for the accounts for 1948 and 1949? A. Yes.

Q. And have you got those with you? A. I gave those to—I believe Mr. Christy has them.

Mr. Fennelly: May I have them, please?

(1460) May I have one minute, please, while I look at these transcripts, your Honor?

The Court: Oh, surely.

(To the witness) May I see the exhibit?

(Witness hands exhibit to the Court.)

The Court: Thank you.

Q. Now, did I understand you to say that the transcript you prepared represents the date of payments on the account? A. The date of purchase on the account.

Q. I thought in answer to the Prosecutor's question that you had stated that you had information as to the time that the account was paid.

Mr. Christy: I don't believe I asked that question.

A. I don't remember that.

Q. Well, is there anything on your transcript to indicate when the account was paid? A. I copied it from the slips.

Q. Will you please answer my question yes or no? Is there— A. No.

Q. —anything on your transcript to indicate when the account was paid? A. No.

Q. And the fact is that you don't know when it was paid; isn't that true? A. That is correct.

Q. Now, I show you a ticket, sales ticket, on (1461) Government's Exhibit 323-A under date of December 13, 1949; right? A. That is right.

Q. Now, you don't know when that was paid, do you? A. No, sir.

Q. Now, didn't you learn that it was not paid in 1949? A. If I could see the transcript, there may be some note on it; otherwise I didn't learn of any time it was paid.

Q. There isn't anything on your transcript that would show the date, didn't you just tell us? A. I mean unless there is a specific notation, I wouldn't know.

The Court: Are you asking him whether there is anything on the transcript for '47 that would show a payment of an item dated in 1949?

Mr. Fennelly: No. Your Honor, he has handed me two transcripts for 1949. He indicated he wanted to see those to see when it was paid. I am just referring to the 1948 and 1949 transcripts that he gave me, because he has already told us that there isn't anything on them that would indicate that date of payment.

The Witness: If there is no notation as to payment, any specific payment, then there would be no way of telling.

(1462) Mr. Fennelly: May I have Government's Exhibit 43, Mrs. Loretta Costello's ledger account?

Mr. Christy: May we mark these other two transcripts for identification?

The Court: You may.

(Marked Government's Exhibit 325 and 325-A for identification.)

Q. I show you Government's Exhibit 43—

The Court: Will you wait a minute.

Mark that 325. 325-A will be this one here (indicating).

(Exhibits marked as directed.)

Q. Now, the date of the sales slip that I referred you to as part of 323-A was for $450 dated December 13, 1949; right? A. That is right.

Q. Now, will you look at the bank account of Mrs. Costello and tell me whether from December 13, 1949, to the end of the year you find any check in payment of that account? A. December 13th?

Q. You are looking at the balance over on the other side. A. There is one number here I can't read. I am trying to determine whether or not—

Q. I have a magnifying glass here.

Mr. MacMahon: Your Honor, I submit that the account is in evidence. If Mr. Fennelly has the figure (1463) he may read it.

Mr. Fennelly: Will the Government produce all Mrs. Costello's checks for the month of December, 1949?

The Witness: I don't see any—

Mr. MacMahon: We don't have the checks, your Honor.

The Court: You don't have them. Very well.

A. I don't see any check for that amount, sir. $450—there is no check for $450.

The Court: Keep your voice up so the reporter and I and the jury can hear you.

A. I don't see any check for $450.

Q. That is right. And you can't tell us for the years 1948 or '49 when the items that are on the bills were paid, can you? A. No, sir.

Mr. Fennelly: That is all.

Mr. Christy: Your Honor, if my recollection is correct, Mrs. Thal testified this morning that this was—

The Court: If you want to question the witness, you may, but this is not the time for argument.

Mr. Christy: I have no further questions, your Honor.

(Witness excused.)

Mr. Christy: The Government calls Frank Salerno.

(1464) FRANK SALERNO, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

The Court: Will you keep your voice up, Mr. Salerno, so that the last juror and the gentlemen at the last table can hear you?

Direct Examination by Mr. Christy:

Q. Mr. Salerno, where do you live? A. Port Washington.

Q. Whereabouts in Port Washington? A. 8 Rockwood Avenue, Port Washington.

Q. What is your occupation, sir? A. I am head custodian, public schools.

Q. How long have you been there? A. I have been there about 12 years.

Q. During the summers, Mr. Salerno, did you ever work for Frank Costello? A. Part time, yes.

Q. And what was the nature of your duties? A. Taking care of the lawns.

Q. Speak up just a little, Mr. Salerno. A. Taking care of the lawn.

Q. Taking care of the grounds? A. That is right.

Q. Where was his house located? A. Barkers Point.

Mr. Fennelly: I object to "his house." It (1465) appears that it is her house.

Q. Where was the house located? A. Barkers Point, Long Island.

Q. Do you remember approximately when you started working at the Costello residence? A. I believe 1946.

Q. And while you were working there, how many months a year did you spend there working? A. Five months.

Q. Five months a year? A. Five months a year.

Q. Those would be the summer months? A. That is right.

Q. How much were you paid for the work that you did there, Mr. Salerno? A. Thirty dollars a month.

Q. Thirty dollars a month? A. That is right.

Q. So that if you worked there for five months you would get a total of $150 a year, is that correct? A. Correct.

Q. And you worked there in 1946? A. As near as I could remember, I think.

Q. And 1947? A. Yes.

Q. And 1948 and 1949? A. That is right.

Q. And in each one of those years you received about $150, is that correct? A. That is correct.

Q. Mr. Salerno, in addition did you purchase supplies for Mrs. Costello from time to time? (1466) A. As I recall, I did.

Q. And were you reimbursed for the purchases that you made? A. Yes, sir.

Q. Mr. Salerno, I show you Government's Exhibit 51 in evidence, which is a check dated April 5, 1949, and it is payable to Frank Salerno in the amount of $47. Is that your endorsement on the back of that check? A. Yes, sir.

Q. And is that a check that you received as reimbursement for some supplies that you had purchased for the Costello residence? A. Yes, sir.

Mr. Christy: No further questions, your Honor.

Cross Examingtion by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Q. And this check in payment—April 5, 1949—for supplies, that is Mrs. Costello's check? A. I don't know. I guess it is.

Mr. Fennelly: I offer it in evidence.

Mr. Christy: It is in evidence.

The Court: It is in evidence.

Mr. Fennelly: What number is it? Oh, it's inside. Oh, excuse me.

That's all.

(1467) Mr. Christy: 51, I believe.

No further questions, your Honor.

Thank you, Mr. Salerno.

(Witness excused.)

Mr. Christy: The Government calls Mrs. Victoria Salerno.

Victoria Salerno—for Government—Direct

VICTORIA SALERNO, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mrs. Salerno—

The Court: Now, Mrs. Salerno, this is something new to you, I presume.

The Witness: Yes, sir.

The Court: So just make an effort to keep your voice up so the gentleman, last one, in the jury box and the gentlemen at the rear table will be able to hear you.

Q. Mrs. Salerno, where do you live? A. Port Washington.

Q. Whereabouts? A. 8 Rockwood Avenue.

Q. Are you employed now, Mrs. Salerno? A. Yes, sir.

Q. Where do you work? A. The New York Telephone Company.

Q. Mrs. Salerno, have you ever worked at the Costello (1468) residence? A. Yes, sir.

Q. Do you want to speak up just a little? A. Yes.

Q. And did you occasionally help out there from time to time? A. That is right.

The Court: Where was that located?

The Witness: At Sands Point.

The Court: Sands Point? Very well.

Q. Were you paid for this work? A. Yes, sir.

Q. And you were paid in cash? A. Yes.

Q. Mrs. Salerno, did you occasionally receive money

from Mrs. Costello to purchase household necessaries and other items? A. You mean reimbursement? Being in reimbursement of something I bought; yes.

Q. You did purchase them? A. Yes.

Q. And you were reimbursed, were you? A. Yes.

Q. And you worked there in 1949, did you not? A. No. 1949 I worked in the Telephone Company.

Q. But did you occasionally do some work for Mrs. Costello in 1949? A. I don't remember, sir. Maybe before April. I went to work for the Telephone Company that year.

Q. I show you Government's Exhibit 56 in evidence, which are two checks. One is dated March 3, 1949, payable to Victoria Salerno in the amount of $32, and one dated April 4, 1949, payable to Victoria Salerno in the amount (2469) of $60.: A. My name on it.

Q. Is that your endorsement on the back of each of those checks? A. Yes, this first one looks like it. I wouldn't say the second one for sure here.

Q. This check is payable to Victoria Salerno, is it not? A. Yes, that has my name on there.

Q. That is dated April 4, 1949? A. Yes, sir. I went to work February 7th for the Telephone Company.

Q. Were these checks issued to you as reimbursement for supplies which you purchased for Mrs. Costello? A. Possibly. I wouldn't say for sure.

Q. But they were checks issued to you, is that correct? A. Bears my name on it.

Q. And you cashed them? A. Yes.

The Court: May I see them a moment?

(Witness hands papers to Court.)

The Court: Thank you.

Victoria Salerno—for Government—Cross.
Elizabeth Bute—for Government—Direct.

Mr. Christy: No further questions.

Cross-Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Mr. Fennelly: That is all.

Mr. Christy: Thank you, Mrs. Salerno.

(Witness excused.)

(1470) Mr. Christy: The Government calls Miss Elizabeth Bachelor.

ELIZABETH BUTE, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

The Witness: Bachelor is my maiden name. Elizabeth Bachelor Bute.

Direct Examination by Mr. Christy:

Q. Mrs. Bute, where do you live? A. 30-80 32nd Street, Astoria.

Q. Where are you employed? A. At the New York Veterinary Hospital, 144 East 57th Street, New York.

Q. How long have you been employed there, Mrs. Bute? A. 22 years next month.

Q. Are you the secretary at the New York Veterinary Hospital? A. Yes, sir.

Q. In this position as secretary are you familiar with

and do You have access to the records kept by the New York Veterinary Hospital? A. Yes, sir.

Q. Mrs. Bute, do you know that the New York Veterinary Hospital has on occasion treated some animals for Mrs. Costello? A. We have.

Q. And do you have the records pertaining to those (1471) services? A. I do.

Q. May I have them, please? A. Do you want the cards?

Q. Yes. A. (Hands papers to Mr. Christy.)

(Marked Government's Exhibit 326 for identification.)

The Court: Five cards?

Mr. Christy: There are 5 cards, your Honor.

Q. Mrs. Bute, I show you Government's Exhibit 326 for identification and I ask you if those are the ledger cards kept by the New York Veterinary Hospital. A. They are.

Q. On which is recorded payment at various times by Mrs. Costello of 115 Central Park West. A. That is right.

Q. And these ledger cards are records kept in the regular course of your business? A. Yes.

Q. And it is the regular course of your business to keep such records? A. That is right.

Mr. Christy: The Government offers Government's Exhibit 326 for identification in evidence and restricts its offer to those years from 1945 through 1949, your Honor.

The Court: Very well.

Mr. Christy: And may we substitute photostats (1472) at the end?

The Court: You may.

Elizabeth Bute—for Government—Cross

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(Marked Government's Exhibit 326 in evidence.)

Q. Mrs. Bute, from these records have you computed the totals that were paid by Mrs. Costello for the years 1945 through 1949? A. I have.

Q. Have you those figures? A. I have.

Q. What was paid in 1945? A. 1945, the total was $59.75.

Q. 1945 was $59.75, is that correct? A. That is right.

Q. In 1946 it was $134.75? A. Correct.

Q. 1947, $35. A. That is right.

Q. 1948, $89. A. That is right.

Q. 1949, $61.50. A. Correct.

Mr. Christy: No further questions.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Q. And those expenditures were for treatments of dogs, were they not? A. That is right.

(1473) Q. For their care? They were sick? A. Yes, sir.

Mr. Christy: Thank you.

(Witness excused.)

Mr. Christy: The Government calls Anthony Minniaci.

Anthony Minniaci—for Government—Direct

ANTHONY MINNIACI, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Minniaci, where do you live? A. I live 1211 Ward Avenue, Bronx.

Q. What is your occupation? A. A barber.

Q. Do you want to keep your voice up just a little, Mr. Minniaci, so the last juror may hear you? A. I am a barber.

Q. Where are you employed, sir? A. Waldorf Astoria Hotel.

Q. Are you employed in the Terminal Barber Shop? A. Terminal Barber Shop.

Q. You work at the Waldorf Astoria Branch? A. I work at the Waldorf.

Q. Is that correct? A. Yes.

Q. How long have you been working there, sir? A. I have been working there about 20 years.

(1474) Do you know the defendant Frank Costello? A. Yes, sir.

Q. Do you see him in this court room? A. Yes, sir.

Q. Will you point him out? A. Right over there, sir.

Mr. Christy: May the record indicate, your Honor, that the witness indicated Frank Costello.

The Court: The defendant.

Mr. Christy: The defendant.

Q. Mr. Minniaci, have you performed barbering services for Mr. Costello? A. Yes, sir.

Q. Have you also shaved him? A. Yes, sir.

Mr. Fennelly: Isn't that a barbering service?

Mr. Christy: I think so.

Q. Do you remember when you first started to shave him and cut his hair? A. About 1939.

Q. About 1939. A. About 1939, yes, sir.

Q. How many days a week do you work at the Waldorf Barber Shop, sir? A. Five days a week, sir.

Q. On the days on which you are in the shop have you seen Frank Costello in that shop also? A. Yes, sir.

Q. And, how many months a year would you say you have seen him in there, going back to 1939, taking an average? A. Figure an average, 40 weeks a year.

(1475) Mr. Fennelly: I object to averages, your Honor.

The Court: Well, he just answered. He said about an average of 40 weeks a year.

Q. That would be your best recollection, about 40 weeks a year? A. Yes, about 40 weeks.

Q. How often does Frank Costello get a shave? A. Every day, sir.

Q. How often do you cut his hair? A. Once a week.

Q. Once a week? A. Once a week.

Q. Does he also get a manicure? A. Yes, sir.

Q. How often is that? A. Once a week.

Q. At the same time he gets— A. At the same time he gets a haircut.

Q. At the same time he gets a haircut? A. Yes, sir.

Q. Does he also have his shoes shined? A. Yes, sir.

Q. Now, during the time you have been there since 1939 have you cut Frank Costello's hair most of the time? A. Yes, sir.

Q. Have there been occasions when he was in the shop and you didn't cut his hair? A. Yes, sir.

Q. But you saw him in the shop and he did get his hair cut at that time? A. Yes, sir.

Q. Or a shave? A. Yes, sir.

Q. Did he frequently wait for you if you were busy? A. Yes.

(1476) Q. Did Mr. Costello tip you for these services, Mr. Minniaci? A. Yes, he gave me—

Q. What did he generally tip you? A. He tips me about 25 per cent of the check.

Q. About 25 per cent of the check. And you have been shaving him and cutting his hair since about 1939, is that correct? A. That is correct.

Mr. Fennelly: The witness has so testified, your Honor.

The Court: Yes.

Mr. Christy: No further questions, your Honor.

The Court: Very well.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the Grand Jury that— A. No, sir.

Q. —returned the indictment in the case? A. No, sir.

Mr. Fennelly: That is all.

Mr. Christy: Thank you, Mr. Minniaci.

The Court: You may leave now.

The Witness: Thank you.

(Witness excused.)

Mr. Christy: The Government calls Edward Purfield.

(1477) EDWARD PURFIELD, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Purfield, where do you live? A. 5105 Eleventh Avenue, Brooklyn.

Q. Where are you employed, sir? A. Terminal Barber Shops.

Q. Are you comptroller of the Terminal Barber Shops? A. Yes, sir.

Q. How long have you been with the Terminal? A. 28 years.

Q. Mr. Purfield, can you tell me what the cost of a shave at the Terminal Barber Shops was in 1939? A. 1939, the cost was 25 cents.

Q. And a haircut? A. 60 cents.

Q. And a manicure? A. 75 cents.

Q. Did there come a time when there was an increase in those prices? A. There was an increase in March, 1943, if you will allow me to look up my records here.

Q. Do you have something to refresh your recollection? A. Yes. Yes, there was an increase on March 18, 1943.

Q. And what did it go up to? A. The price of a haircut was increased from 60 to 75 cents, and the price (1478) of a shave was increased from 25 to 35 cents, and a manicure from 75 cents to 85 cents.

Q. Now, sir, did there come a time when the prices were again increased? A. Yes, sir.

Q. When was that? A. That was on March 17, 1946.

Q. And what did the prices become then? A. Then the prices were increased from 75 to 90 cents.

Q. That is for a haircut? A. Haircut, and the shave

was increased from 35 to 40, and the manicure from 85 to a dollar.

Q. Now, Mr. Purfield, from those computations that you have just given us, have you computed how much a man would pay the Terminal Barber Shops for a haircut once a week, a manicure once a week, and a shave every day for five days over a period of 40 weeks a year, taking into account a tip of 25 per cent of the cost of the services? A. Yes, sir.

Mr. Fennelly: Just a minute. I object to that. The man who testified before did not give the manicure; he was just a barber.

Mr. Chrisfy: I believe he testified—

Mr. Fennelly: His tip, I understood, was restricted to a shave and a haircut.

The Court: Correct. He testified that the tip (1479) that he got was 25 per cent of the bill, and he did not specify whether the manicure went on the bill or not, but maybe if there is a general practice about that the present witness might qualify as an expert.

By the Court:

Q. Is there any practice in the barber shop with respect to how a patroir pays for the service that he gets? In other words, does the work that is done by the barber go on one bill and the work that is done by a manicurist on another? A. No, your Honor, there are two separate checks made; one for the barber service and one for the manicure, and if there is any other service it is made separately also.

Q. Do you know what the practice of the patrons has been over the years, whether the barber is tipped sepa-

rately and the manicurist is tipped separately? A. Yes, generally they are tipped separately.

Q. That is the practice, is it? A. Yes.

Q. Very well. Now, will you tell us whether or not, on making these tips you have taken this 25 per cent tip on the total service, which would include a manicure once a week, or have you taken the 25 per cent merely on such services as the barber would render? A. No, on both the barber and the manicure.

(1480) Q. Go ahead. It is customary, is it not, however, for patrons to give a gratuity or tip to the manicurist as well as to the barber? A. Yes, your Honor.

Q. Are you able to state from your experience whether the amount of the gratuity to a manicurist is about the same or greater than that which is usually given to the barber? A. I would say it is greater.

Q. So that if you were to allow 25 per cent of the tip you would not be uprating or upgrading the amount of the tip given to the manicurist, would you? A. No.

The Court: Very well.

Mr. Fennelly: I still press my objection.

The Court: I overrule it.

By Mr. Christy:

Q. Now, Mr. Purfield, on the basis of your computations did you find that a man who had had these services would have paid in 1940 a total of $130? A. Yes, sir.

Q. And in 1941 and 1942 also $130? A. Yes, sir.

Q. And in 1943 $158? A. Yes, sir, that is right.

Q. And in 1944 $168? A. That is right.

Q. And in 1945 $168? A. Yes, sir.

Q. And in 1946 $188? A. Yes, sir.

Edward Purfield—for Government—Cross
William T. Gregorius—for Government—Direct.

(1481) Q. And in 1947, 1948 and 1949 $195 in each year. A. Yes, sir, that is correct.

Q. Is that correct? A. Yes, sir.

Mr. Christy: No further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

The Court: Anything else? Any other questions?
Mr. Fennelly: No questions.
Mr. Christy: Thank you, Mr. Purfield.
The Witness: You're welcome.

(Witness excused.)

Mr. Christy: The Government calls William T. Gregorius.

WILLIAM T. GREGORIUS, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Gregorius, where do you live? A. 460 Wilson Boulevard, Mineola.

Q. Where are you employed, sir? A. Bethpage, Long Island.

Q. Whereabouts? A. Dan's Supreme Market.

(1482) Q. Mr. Gregorius, did you at one time operate the Bay View Market in Port Washington? A. I did.

Q. Will you keep your voice up just a little so the last member of the jury may hear you? You did? A. I did.

Q. Do you remember approximately when you operated the Bay View Market? A. From about 1945 to 1949.

Q. And were you the sole owner? A. I was.

Q. And did you work there 12 months of the year? A. I did.

Q. What did you sell, mainly? A. Meat.

Q. Fresh meat? A. That is right.

Q. During the time that you operated the Bay View Market was Mrs. Costello a customer of yours? A. She was.

Q. Do you remember where she lived? A. I do.

Q. Where was that, sir? A. Bakers Point Road in Sands Point.

Q. Did you keep a ledger sheet of the accounts of your customers? A. Most of them.

Q. Were you able to find a ledger sheet for the account of Mrs. Costello? A. I wasn't.

The Court: You say you were not, or you were able? You were or you were not?

The Witness: I wasn't.

(1483) The Court: You were not. Very well.

Q. Now, was Mrs. Costello a customer of yours during the summer? A. In the summer and winter.

Q. Both times of the years? A. Both times.

Q. But she was mainly a customer during the summer? A. That is right.

Q. For about five months? A. About that.

Q. Keep your voice up just a little. But you would also sell meat to them during the wintertime, is that correct? A. I did.

Q. Did you ever bring meat in to them at their apartment in 115 Central Park West? A. I did.

Q. Mr. Gregorius, during the summer months what was the average amount of Mrs. Costello's purchases per week?

Mr. Fennelly: I object to it.

The Court: Are you able to—have you a recollection as to what that would be?

The Witness: I have, approximate.

The Court: You may answer.

Q. What was that, Mr. Gregorius? A. An average of about $35 a week.

Q. $35 a week? A. Approximate.

Q. So she bought about $35 a week from you in the summertime, or a period of five months, about 20 weeks, she would spend about $700 in a year; is that correct? (1484) A. I guess that would figure out about right.

Q. Now, did she make these purchases in the years 1947, 1948 and 1949? A. She did.

Q. So that in each year you would say she spent a minimum of $700?

Mr. Fennelly: I object to that. The witness hasn't said that.

The Court: You said that it would be about $30 a week for 20 weeks.

Mr. Christy: $35, I think he said.

The Court: $35 a week.

The Witness: Approximate.

Mr. Fennelly: He didn't say it was a minimum.

The Court: Approximately, not a minimum.

Q. Would you say that was a minimum figure spent by Mrs. Costello?

William T. Gregorius—for Government—Cross

Mr. Fennelly: I object to that.

The Court: He is asking him.

Q. Mr. Gregorius, you also testified, I believe, that they purchased meats in the wintertime occasionally. A. That is right.

Q. So that now would you say $700 was a minimum? A. That is about right?

Q. And that would be in 1947, '8 and '9? A. Right.

(1485) *Cross Examination by Mr. Fennelly:*

Q. Did you testify before the grand jury that returned the indictment? A. I didn't.

Q. And are you sure that you served the Costellos for five months during the summertime? A. I am almost positive I did.

Q. Are you sure it was five months? A. Well, I am almost positive.

Q. It could have been four? A. It could be four, some years it could have been four.

Q. Some years it could have been less? A. Well, it is about that, four or five months out of the year.

Q. And did you ever in the summertime deliver any meat in New York to the Costellos? A. No, I didn't.

Q. You delivered it at Sands Point? A. In the summertime I did.

Mr. Fennelly: That is all.

Mr. Christy: No further questions.

The Court: You may go.

Mr. Christy: Thank you, Mr. Gregorius.

The Witness: You are welcome.

(Witness excused.)

Jack Dershansky—for Government—Direct

Mr. Christy: The Government calls Jack Dershansky.

(1486) JACK DERSHANSKY, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Dershansky, where do you live? A. At 227 Haven Avenue, that is in Manhattan.

Q. Would you keep your voice up just a little, sir, so the last man in the jury may hear you? A. Yes.

Q. Where do you work, sir? A. I have my own place of business.

Q. Where is that? A. That is 2385 Broadway, Manhattan.

Q. Mr. Dershansky, were you formerly a part owner of the Majestic Food Mart, 250 Columbus Avenue? A. That is correct.

Q. And were the Majestic Meat Mart and the Majestic Fruit Mart also operated in the same building? A. That is correct.

Q. You were the part owner of the Majestic Food Mart, is that correct? A. Yes.

Q. Do you remember when you became the part owner? A. About 1941; rather, about 1945 or '46; around that time.

Q. Were you operating there in 1949, sir? A. Yes.

(1487) Q. Did the Majestic Food Mart sell dairy products? A. Yes, sir.

Q. Now, while you were operating the Majestic Food Mart you had occasion to be in the store most of the day, did you not? A. That is correct.

Q. And while you were the part owner was Mrs. Loretta Costello a customer of yours? A. Yes.

Q. Do you remember where she lived? A. In the Majestic Apartments, that is, 115 Central Park West, Manhattan.

Q. Did you render her a bill for her charges from time to time? A. About once a month.

Q. And did Mrs. Costello frequently pay her account by check? A. Usually, that is the way all bills were paid.

Q. Did she usually pay her account by check in the year 1949? A. Yes.

Q. Now, Mr. Dershansky, I show you Government's Exhibit 58 in evidence consisting of two checks; the first check is dated March 10, 1949, and that is payable to the Majestic Food Mart, and the second is dated December 2, 1949, payable to the Majestic Food Mart. The first one is $70.21, and the second is $69.62.

Were those checks received by you in payment? A. May I look on the back of the check to see who was the endorser?

(1488) Q. Yes, certainly. A. Yes, that is our stamp.

Q. That is your stamp on the back? A. Yes, that is right. Let me see the other check.

The Court: Keep your voice up a little, please.

The Witness: Yes, Judge.

A. Well, one is very clear, I can see that. The other one I can't—

Q. The second check, dated December 2, 1949, is payable to the Majestic Food Mart, is it not? A. Yes, sir.

Q. And that was the store that you operated? A. Yes, that was the store.

Q. Now, I show you Government's Exhibit 60 in evidence, and that consists of 5 checks, each of which is payable to the Majestic Dairy Mart. Did you occasionally get

checks payable to the Majestic Dairy Mart for goods which your store, the Majestic Food Mart, had sold? A. Yes. Many people used to make out checks for Majestic Dairy or Majestic Grocery Department, or always they used to—as long as they had "Majestic" on there we knew it was ours.

Q. Well, now, would you look at these checks and tell me if they are all 1949. A. Yes, sir, they seem to be all '49.

Q. On a check dated November 3, 1949, payable to (1489) the Majestic Dairy Mart in the amount of $35.59, is that your endorsement on the back, Majestic Food Mart?

The Court: I suggest that you put it under the light, Mr. Witness.

A. Oh, yes. Thank you. Yes, that is ours.

Q. And on a check dated September 1, 1949, payable to Majestic Dairy Mart in the amount of $47.68, I call your attention to the endorsement Majestic Food Mart? A. Yes, that is ours.

Q. That is your endorsement? A. Yes.

Q. And on a check dated June 3, 1949, payable to Majestic Dairy Mart in the amount of $25.28, I call your attention to the endorsement on the back of that, Majestic Food Mart. A. Yes, that is.

Q. And a check dated April 5, 1949, payable to the Majestic Dairy Mart in the amount of $62.57, I ask you again if your endorsement appears on the back of that. A. It is a little hazy, but it looks like ours.

Q. And these five checks are from Government's Exhibit 60 in evidence. Now, on a check from Government's Exhibit 60 in evidence dated October 4, 1949, payable to the Majestic Dairy Mart in the amount of $36.98, it does not appear legibly that there is an endorsement; is that right?

A. No, there isn't much writing there, so I can't (1490) see it.

Q. But that is a check payable to the Majestic Dairy Mart? A. Yes.

Q. And the Majestic Food Mart was the only one that sold the dairy products, is that correct? A. Yes.

Q. So that that check was issued to your store for services—withdraw that.

That check was paid to you for goods sold by your store, the Majestic Food Mart, is that correct? A. That is right.

Mr. Christy: I have no further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Q. As I heard those checks, if correctly, the Costellos did no business with you for three months in the summer, July—from June 3rd, which was the last payment I think you read off, and the next one is September 6th—wasn't it—1949? A. That is right.

Q. So that for only three months in the summertime they did not do business with you— A. No.

Q. —at that time? A. Not as a rule.

(1491) Mr. Fennelly: No further questions.

Mr. Christy: Thank you, Mr. Dershansky.

May I state the total of these checks for the record?

The Witness: May I step down?

The Court: Yes.

You may do that and then we will take our recess.

Mr. Christy: The seven checks, Government's Ex-

hibit 58 in evidence and Exhibit 60 in evidence, total $377.90 in the year 1949.

The Court: Now we will take our mid-afternoon recess.

(Jury retires.)

(Recess.)

(Jury present.)

Mr. Christy: The Government calls Edward Miller.

EDWARD W. MILLER, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Miller, where do you live? A. Bronxville, New York.

Q. Whereabouts in Bronxville? A. 1 Bronxville Road.

Q. Where are you employed? (1492) A. Industrial Bank of Commerce.

Q. Where is that located? A. 56 East 42nd Street, New York City.

Q. How long have you been with the Industrial Bank? A. Seven years.

Q. Are you a teller at the Industrial Bank of Commerce? A. That is right.

Q. Are part of your duties to receive deposits in that bank? A. Yes.

Edward W. Miller—for Government—Direct

Q. Tell me, Mr. Miller, does each teller have his own individual stamp? A. Yes.

Q. That stamp is not used by anybody else, is it? A. No.

Q. Are you familiar with the ledger sheets kept of the various accounts? A. Yes.

Q. And have you brought with you a ledger sheet relating to the account of Lou Penzner, Inc.? A. I have.

Q. May I have it? A. (Hands paper to Mr. Christy.)

(Marked Government's Exhibit 327 for identification.)

Q. I show you Government's Exhibit 327 for identification and I ask you if that is a ledger sheet of the account of Penzner, Inc. of 203 East 49th Street, showing activity in the month of October, 1949? (1493) A. That is right.

Q. Does that have a deposit on there of $4,852.27 on October 11, 1949? A. It does.

Q. And this ledger sheet is a record kept by you in the course of the bank's business? A. Yes, sir.

(Marked Government's Exhibit 327-A for identification.)

Q. Mr. Miller, I show you Government's Exhibit 327-A for identification and I ask you if this is a photostat prepared in your bank of a deposit sheet—slip for the account of Lou Penzner, Inc., 203 East 49th Street, on October 11, 1949? A. It is.

Q. In the amount of $4,852.27. A. That is right.

Q. There is a stamp on there. Is that your stamp? A. Yes, sir.

Q. That is your stamp? A. It was my stamp.

Q. It was your stamp? A. In 1949.

Q. You no longer have that stamp? A. That is correct.

Q. But in 1949 it was your stamp. Does that exhibit, Government's Exhibit 327-A, show the deposit of a check in the amount of $4,000.67. A. Yes.

The Court: May I see the last exhibit?

(1494) (Exhibit handed to the Court.)

Q. Mr. Miller, I show you Government's Exhibit 52 in evidence, which is a check dated October 10, 1949, signed by Frank Costello and payable to Lou Penzner, Inc. in the amount of $4,000.67. Is that the check that is shown on that deposit slip, Government's Exhibit 327-A for identification? A. That I wouldn't—I couldn't tell you that.

Q. They are checks in the same amount? A. That is right.

Q. And the deposit slip is in the name of Lou Penzner, Inc., is it not? A. That is right.

The Court: Is there anything on that check that indicates that it cleared through your bank?

The Witness: Yes. It has our stamp.

The Court: On what date?

The Witness: October, looks like, 11th.

The Court: Is that the date of the deposit?

The Witness: That is right.

The Court: Is there any other entry on the ledger sheet of a check or an item in that amount on the 11th?

The Witness: No, sir.

Q. There is an item on the ledger sheet of $4,852.27 on October 11, 1949, is there not? A. Yes, sir.

(1495) The Court: And that item on the deposit

slip appears to consist of a check for $4,000.67 and a cash item of eight hundred and some-odd dollars; is that right?

The Witness: That is right.

Q. So that it would appear that this check, Exhibit 52, had been deposited to this account, is that correct? A. It would appear to me.

Mr. Christy: The Government offers Government's Exhibit 327 for identification and 327-A in evidence. May we substitute a photostat?

The Court: Yes.

Mr. Fennelly: I object to them as cumulative, your Honor. It appears on the face of the check already in evidence it was deposited, pay to the order of this bank on the endorsement, Exhibit 52.

The Court: That seems so to me but I will hear you on it.

You already have in evidence check for $4,000.67 drawn by defendant, 1949; is it?

Mr. Christy: Yes, your Honor.

May I ask one further question about this?

The Court: Yes.

Q. On Government's Exhibit 52 in evidence is there an endorsement, "Pay to the order of the Industrial Bank of Commerce, Lou Penzner, Inc."? A. Yes.

(1496) Q. And the deposit slip, 327-A for identification, carries that name Lou Penzner, Inc., does it not? A. Yes.

Mr. Christy: I withdraw my offer then, your Honor.

The Court: Very well.

Mr. Christy: May I substitute a photostat of the

ledger sheet, which is marked for identification?

The Court: Yes, you may.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Mr. Christy: Thank you, Mr. Miller.

(Witness excused.)

Mr. Christy: The Government calls Mrs. Agnes Penzner.

AGNES PENZNER, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mrs. Penzner, where do you live? A. In Roslyn, Long Island.

Q. Do you have a street address? (1497) A. 24 Mineola Avenue.

Q. Roslyn, Long Island? A. Roslyn, Long Island.

Q. Are you presently the president of Agnes Penzner, Inc.? A. Yes, I am.

Q. Where is that located? A. 899 Third Avenue.

Q. Mrs. Penzer, are you also the widow of the late Lou Penzner? A. Yes, I am.

Q. Did he operate a business known as Lou Penzner, Inc.? A. Yes, he did.

Q. Do you remember where that was located? A. 203 East 49th Street.

Q. Will you tell us what business Lou Penzner, Inc. was in? A. He was in the floor covering business.

Q. In the floor covering business? A. Yes.

Q. Did you have occasion to go down to the office of Lou Penzner, Inc. from time to time? A. Occasionally I went out—went down there to help out.

Q. Do you know if Lou Penzner, Inc. maintained books of account? A. Well, they maintained books for the business.

Q. They did? A. Yes.

Q. Now, Mrs. Penzner, in 1950 when your husband was ill was Lou Penzner, Inc closed for a period of (1498) time? A. Yes, they were.

Q. And were the books and records of Lou Penzner, Inc. removed from the premises of the store? A. Yes, they were.

The Court: What was the date that you mentioned, some year? 1940—

Mr. Christy: 1949. I think 1950 was the last date that I gave, your Honor.

The Court: No, but you asked the witness was there a period of time when the place was closed and the books were removed, and was that in 1949 and 1950?

Mr. Christy: That was 1950, your Honor.

Q. You don't have any idea where the books of Lou Penzner, Inc. are, do you? A. No.

Q. You haven't seen them since 1950, have you? A. No. I didn't even see them in 1950.

Q. Do you know where Lou Penzner, Inc. had a bank account? A. I think it was the Commerce Bank. I am not too sure now. I don't recall.

Q. Did you know at one time where it was? A. Yes.

Agnes Penzner—for Government—Cross

Q. Mrs. Penzner, I show you Government's Exhibit 52 in evidence, which has an endorsement on the back, "Pay to the order of the Industrial Bank of Commerce." Is that where the Lou Penzner, Inc. had their account? (1499) A. Yes, it is.

Q. Does that endorsement appear to be the endorsement of Lou Penzner, Inc.?

Mr. Fennelly: I don't know what difference it makes. It is in evidence, isn't it?

The Court: Yes.

Q. That appears to be the endorsement that was used by Lou Penzner, Inc.? A. Well, it looks like it would be apparent because the face of the check is the same.

Mr. Christy: No further questions, your Honor.

Cross Examination by Mr. Fennelly;

Q. Did you testify before the grand jury that returned the indictment in this case, Mrs. Penzner? A. No, sir.

Mr. Fennelly: That is all.

Mr. Christy: No further questions.

Thank you, Mrs. Penzner.

(Witness excused.)

Mr. Chirsty: The Government calls Theodore Gold.

Theodore Gold - for Government - Direct

THEODORE GOLD, called as a witness on behalf of the Government, having been first duly sworn, (1500) testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Gold, where do you live? A. Tarrytown, New York.

Q. Where are you employed, sir? A. Tarrytown, New York.

Q. Whereabouts? A. Sun Cliff Health Farm.

Q. How long have you been with Sun Cliff? A. Approximately 21 years.

Q. Are you the treasurer of Sun Cliff? A. I am.

Q. Now, when people visit Sun Cliff do they register when they come in? A. They do.

Q. And the daily record of their visit is kept, is it not? A. That is right.

Q. Does that record also indicate the diet which any particular person might wish to have? A. That is correct.

Q. Mr. Gold, do you know if Mrs. Costello was ever a guest at Sun Cliff? A. She was.

Q. Do you have records relating to her account, sir? A. I have.

Q. May I have them? A. (Handing) These are her registration cards and these are the books showing the date she was there.

Mr. Christy: Will you mark those as one exhibit? (1501) (Marked Government's Exhibits 328, 328-A and 328-B for identification.)

Q. Mr. Gold, I show you Government's Exhibit 328, consisting of three cards. Are they the registration cards

for Loretta Costello of 115 Central Park West for the years 1947, 1948 and 1949? A. They are.

Mr. Christy: May I re-mark this exhibit so that it includes other pages? That is Government's Exhibits 328, A and B. There are other pages that should be marked.

The Court: All right. You mean included in the offer.

Mr. Christy: Yes.

The Court: Are you going to substitute photostats?

Mr. Christy: I will substitute photostats for these, your Honor.

The Court: Very well.

Q. I show you Government's Exhibits 328-A and 328-B for identification, and ask you if those are the daily records kept by Sun Cliff of the charges to an individual visiting. A. They are.

Q. And from these two exhibits, Government's Exhibits 328-A and B, you can compute the charges to a person, is that correct? A. That is correct.

(1502) Q. And do both of these exhibits 328-A and 328-B reflect entries for Mrs. Costello? A. They are.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 328 for identification and so much of 328-A and B as applies to Mrs. Costello in evidence.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibits 328-, 328-A and 328-B for identification received in evidence.)

Mr. Fennelly: On one of these, your Honor, I wanted to call to your attention that there is a similar name—it is Castello. I don't know whether that is supposed to be the one, but I object on that ground.

The Court: I don't quite understand you. Let me see the exhibit.

Mr. Christy: May I ask the witness a question, your Honor?

The Court: You may.

Q. Is the name which appears to be Castello there in fact the name Costello, Mr. Gold? A. It is Costello.

The Court: Would you come up here and indicate to me what you are questioning, Mr. Fennelly?

(1503) Mr. Fennelly: It is Exhibit B. But the witness has said the name is, although spelled Castello, that it should be Costello.

The Court: Overruled: The objection is overruled.

Q. Now, sir, from Government's Exhibits 328-A and 328-B can you tell us how much was spent in the years 1947 and 1949? A. I can.

Q. And was the amount in 1947 $50.50? A. That is correct.

Q. And the year 1949 $55.75? A. That is correct.

Q. Mr. Gold, were you able to locate the day book for the year 1948? A. No, I have not.

Q. You were unable to find it, sir? A. That is right.

Q. Now, from Government's Exhibit 328 in evidence, I

refer you to the card, registration card for the year 1948. Does that indicate the type of diet? A. It does.

Q. Now, does that also indicate how long she was there? A. It does.

Q. Is that one week? A. That is correct.

Q. And can you tell us the minimum charges for one week from the diet as indicated on that Exhibit 328?

The Court: For the year 1948.

Mr. Christy: It is the year 1948.

(1504) That would be $84.

Q. $84 in 1948? A. That is correct.

Mr. Christy: May we substitute photostats, your Honor?

The Court: You may.

Mr. Christy: I have no further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. I did not.

Q. Now, the only thing on these cards indicating what year they belong to is the pencil notation on the back, is that right? A. That is correct.

Q. And who put that on there? A. Well, we put that on there for the year as they—

Q. When did you put it on? A. Of the year, the same year.

Q. Did you put it on? A. Well, sometimes I do, sometimes my dad who was in the office.

Q. Did you put that on? Is that your handwriting? A. This (indicating) is mine, that (indicating) is mine, too.

Q. When did you write the notes on these cards? (1505) A. The same year they were— of the year.

Q. When the card— A. Of the year.

Q. —was made out? A. Of the same year.

Q. And what is there on your card for the year 1949, for example, that shows how many days that Mrs. Costello stayed there? A. I have it right in the book.

Q. I am asking you, on the card is there any— A. Well, it states here that she was on what diet she came in on. The rest of the information is from the day book.

Q. I am asking you, is there anything on your card to indicate the length of time that she stayed there? A. No, there isn't.

Q. And is there anything on your card for the year 1947 to indicate the length of time she stayed there? A. No, there is not.

Q. What is there on the card for 1948 to indicate the length of time? A. A week.

Q. Where it appears "wh"? A. "wk."

Q. "k." Whose handwriting is that? A. That looks like my handwriting, too.

Q. And when was that put on there? A. The day she registered.

Q. And you put it on for that one, the year where the books are lost, and there is no indication on the (1506) cards for the other two years as to the time she stayed there? A. On the card, no.

Mr. Fennelly: That is all.

The Court: Any further questinos?

Mr. Christy: Thank you, Mr. Gold.

(Witness excused.)

Mr. Christy: The Government calls Clifford Marcks.

Clifford Marcks—for Government—Direct

CLIFFORD MARCKS, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Marcks, where do you live? A. Roslyn, Long Island.

Q. Whereabouts, sir? A. 93 Intervale Avenue.

Q. What is your business, sir? A. I am in the fuel oil business.

Q. And do you own your own business? A. Yes.

Q. Is that the Marcks Fuel Oil Company? A. Marcks Fuel Oil.

Q. How long have you been in that business, sir? A. Oh, 1946.

Q. And part of your business, I take it, consists of delivering fuel to customers on Long Island, is that (1507) correct? A. That is right.

Q. Did you ever do any business with Frank Costello? A. I delivered to what is known as the Costello residence in Sands Point.

Q. Is that at 5 Barkers Point Road? A. That is 5a Barkers Point Road. I don't know the number.

Q. Do you have a record of that account, sir? A. Yes.

Q. May I have that? A. (Witness hands.)

(Marked Government's Exhibit 329 for identification.)

Q. Mr. Marcks, I show you Government's Exhibit 329 for identification and ask you if that is a record of the deliveries to Frank Costello at Barkers Point Road, Sands Point, Long Island? A. Yes, that is a record of the deliveries made at—

Mr. Fennelly: Your Honor, I think the Prosecutor shouldn't say "deliveries to Frank Costello," unless it is developed that it was either Mr. or Mrs. Costello. He has been doing it repeatedly, and then it turns out Mrs. ordered it and Mrs. paid it.

The Court: Very well.

Deliveries to the premises at 5 Barkers Point Road, Sands Point?

(1508) The Witness: That is right.

Q. And is this account card carried in the name of Frank Costello? A. On my record it is carried as Frank Costello, taken from the name plate of where we get the account.

Q. Does that cover the years 1946, '7, '8 and '9, sir? A. 1946, '7, '8 and '9? Yes.

Q. This card also shows payments, does it not, Mr. Marcks? A. That is right.

Q. And this is a record kept by you in the regular course of your business? A. That is right.

Q. And it is the regular course of your business to keep such a record? A. That is right.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 329 for identification in evidence.

The Court: You say that covers what years, 1945 through 1949?

Mr. Christy: 1946, '7, '8 and '9.

The Court: Oh, 1946 through 1949.

Mr. Fennelly: I object to it as irrelevant and immaterial and also point out it includes an item for 1950.

Mr. Christy: I will restrict the offer to that—

The Court: You are offering only so much—

(1509) Mr. Christy: Offering only 1949.

The Court: —as applies to 1949?

Mr. Christy: That is right.

The Court: The objection is overruled.

(Government's Exhibit 329 for identification received in evidence.)

Q. Mr. Marcks, from Government's Exhibit 329 in evidence have you computed the totals that were paid in the years 1946, '7, '8 and '9? A. Yes. You mean for each year?

Q. Yes, by year. A. Yes, I could give you the total.

Q. Will you give them to us, sir? A. Well, 1946 was $32.40.

Q. 1947? A. $202.77.

Q. 1948? A. $238.71.

Q. And 1949? A. $183.15.

Mr. Christy: May I substitute a photostat at the close of the examination?

The Witness: You asked me the payments, is that right?

Mr. Christy: That is right.

Q. And those are the payments you have given me? A. That is right.

Q. Taken from Government's Exhibit 329? A. Right.

(1510) Mr. Christy: In evidence.

No further questions.

Cross Examination by Mr. Fennelly:

Q. Mr. Marcks, did you testify before the grand jury that returned the indictment in this case? A. No, I didn't testify before the grand jury. I was just subpoenaed down to this building originally, but I was not before any grand jury.

Clifford Marcks—for Government—Redirect

Q. Who ordered the oil? Was it ordered from you? A. No. In the oil business—can I just explain this, Judge?

The Court: The question—

Q. You don't have to go into explanation. I will get at it another way. A. Nobody ordered the oil.

Q. Who paid you? A. I couldn't tell you who paid me.

Q. You were paid by check, weren't you? A. Because it is paid by check, never paid me by cash or anything. It always came in through the mail. But who paid it, I had no reason to be interested because I carried the account under the name of the name plate, on the plate that I deliver the oil, and it was automatically credited to that account.

Q. Don't you recall they were Mrs. Costello's checks? (1511) A. Yes; I recall they was Mrs. Costello's checks.

Q. I think what you were about to tell us before was you sent around and fill up the tank every so often? A. Automatically. Nobody ever calls us for oil. Not only this oil account, 95 per cent of our accounts are automatic.

Q. And dates on here, are these billing dates, on Exhibit 329, the column of the dates? A. On this side would be our delivery, the date that we happened to put the oil in the tank, and these dates would be—happened to be the date that we made the deposit in the bank.

Q. Second column of dates? A. That is right.

Mr. Fennelly: Fine. Thank you very much.

Redirect Examination by Mr. Christa:

Q. You say you carried the account in the name which appears on the plate in front of the residence, is that correct? A. That is right.

Q. Did the name Frank Costello appear on a name plate

in front of the residence? A. I would assume Frank Costello did on the first delivery, or that we would have set it up in some other name.

Mr. Christy: May I substitute a photostat?

(1512) No further questions, your Honor.

The Court: Very well.

Mr. Christy: Thank you, Mr. Marcks.

The Witness: That is all?

The Court: You may go.

(Witness excused.)

The Court: All right, ladies and gentlemen, we will adjourn until tomorrow at 10:30.

Remember my instructions about talking about the case, and also about newspaper or other accounts of it that you may either see or hear. Don't pay any attention to them.

(Adjourned until Friday, April 30, 1954, at 10:30 a. m.)

(1513) New York, April 30, 1954; 10:30 o'clock a. m.

(Trial continued.)

(Jury not present.)

The Clerk: If there are any witnesses present in the courtroom at this time, they will please retire to the witness room.

Mr. MacMahon: Your Honor, we have a few matters with relation to the record to straighten out this

morning. Mr. Christy has a typographical error, and Mr. Seymour has a matter or two.

Mr. Christy: At page 1491, your Honor, at the bottom of the page, the last question, "Now, the additional 50 cents was paid to you," that should have been $8.50. It is the difference between $331.50 on the third line from the bottom and the $340 on the fifth line from the bottom.

The Court: Yes.

Mr. Christy: May the record so indicate the change?

The Court: Yes, it may.

Mr. Seymour: If your Honor please, there are (1514) a couple of other matters that the record is not clear on.

First of all, your Honor will recall that as to Government's 20 there is a stipulation on the record, stated by your Honor, that counsel for both sides would come to an agreement with respect to matters to be blocked out in that exhibit. We have conferred with Mr. Fennelly and I believe we have arrived at a mutual agreement as to matters to be blocked out. They have been blocked out, although Mr. Fennelly hasn't yet had an opportunity to examine our pasting job to see if it corresponds with the agreement.

I understand he will do so at lunchtime, and I presume that if he has any further concern about it, he will raise it after that time.

The Court: Very well.

Mr. Seymour: The second matter, your Honor: In our first week there was a witness by the name of Haeussler, who testified in connection with records from the Continental Bank & Trust Company. He was asked by counsel for the defendant whether the bank had Recordak films of checks and he was asked

by counsel to inquire after that. I understand that the witness has been in communication with Mr. Fennelly, we also (1515) have been in communication with the witness, and he has reported that those films do not in fact exist. We have also communicated that information to Mr. Fennelly and I think that to the extent we might have any further obligation, as far as that witness is concerned, that it is satisfied. Is that correct?

Mr. Fennelly: Yes.

Mr. Seymour: There is one final matter: In the past record there was a witness by the name of Riker—R-i-k-e-r—who testified concerning some corporate stock held in a company named Phonofilms. During the course of cross-examination Mr. Fennelly asked him about the general ledger for the corporation and the minute books for the corporation. That, I believe, was last week. On Monday we supplied Mr. Fennelly with photostatic copies of the pages from the ledger book which the witness said related to the stock in question. Now, as I understand from Mr. Fennelly, he is satisfied that we have no further obligation with respect to recalling that witness. I wanted to make certain that we had discharged whatever obligation we may have.

Is that correct?

Mr. Fennelly: Yes, all right.

The Court: Mr. Fennelly indicates that it is.

(1516) I have something else. I am in receipt of a letter today, which I haven't yet opened, from Dr. Howard G. Bruenn. That is the doctor who was designated to examine one of the witnesses who said he was unable—whose doctor said he was unable to be here.

At first it was proposed that Dr. Levy examine him and an order was made to that effect. I was in-

formed that Dr. Levy was leaving for Europe and Dr. Bruenn, who is an associate of his, would conduct the examination, and apparently this letter that I have here is the report on that.

I will open it now and have the Clerk mark it as Court's Exhibit No. 2.

(Marked Court's Exhibit No. 2.)

The Court: (To the Clerk) You had better attach the envelope to it.

Who was that witness?

Mr. MacMahon: Henschel—Henschel.

The Court: All right.

(A pause.)

The Court: Court's Exhibit 2 consists of a letter from Dr. Howard G. Bruenn, 903 Park Avenue, New York 21, New York. The letter is dated April 28, 1954, and it is addressed to the Court. It is about a page (1517) and a third. The first page recites the prior history of Mr. Joseph Henschel of 315 Riverside Drive.

The last paragraph is what I will now read:

"I have reviewed all of the electro-cardiograms taken on Mr. Henschel when he was a patient at Mt. Sinai Hospital and these, together with the tracing taken in my office, unquestionably confirm the fact that Mr. Henschel did have an acute myocardia infarction in December 1953. It is just about four months since Mr. Henschel's acute attack and two months since his minor attack in February. It is my opinion that he is not ready at this time to appear as a witness in a court proceeding.

"Sincerely yours, Howard G. Bruenn."

I will turn this over; I suppose it will be desirable for both sides to have copies of it, so will you arrange to have a photostat made?

Mr. MacMahon: Yes.

The Court: So that Mr. Fennelly may have a copy of it.

Mr. MacMahon: Your Honor, there is one other matter. As I understand, Mr. Fennelly has expressed to Mr. Seymour his desire to recall the witnesses Pearl Hough and Philip Hart, the two grand jury reporters who took (1518) the 1939 grand jury minutes, which is Government's Exhibit 30, I believe, your Honor.

At the time those two witnesses were here in court, your Honor at page 158 of the record, I asked whether these two witnesses were excused and your Honor said that "They are excused with the understanding that if Mr. Fennelly determines at some time," and then you said, "Mr. Fennelly determines over the night that he would like to examine the witnesses, we will suspend receipt of this until they are called back at some time convenient to everybody so that he may examine them and we will get along, we will move along to that extent."

Now, the following day, your Honor, we conferred in chambers with counsel for defendant and your Honor relative to which portions of these grand jury minutes would be received in evidence. At that time and later the same morning, in open court, Mr. Fennelly stated his objections to the portions which the Government was offering. Those objections went to materiality and relevancy and prejudice. He raised no objection the following morning whatever, your Honor, as to competency.

And I suggest, your Honor, or submit, that to call

these witnesses back here at this time and hav haggle over grand jury minutes which are 15 ye old would seriously disturb the order of this t and serve (1519) no useful purpose in the adm istration of justice or the fairness of this trial.

I think Mr. Fennelly has had his opportunity. has had it overnight. He failed to avail himself o He raised no objection on that ground the follow morning.

And we, therefore, submit, your Honor, that th witnesses should not be recalled unless Mr. Fenn wishes to do so in the defendant's case.

The Court: I will hear you.

Mr. Fennelly: If your Honor please, the witnesses, Miss Hough and Mr. Hart, grand j stenographers, the prosecutor asked me in the t when they were called, if I would object to th being called out of turn because they were busy had to get away, and they offered the stenograp transcript, and it was then I think at your Hono suggestion, that we let them go while I had an opp tunity to read it, and you said I could at any t call them back.

Now, I at all times knew I wanted to call th back, it was immaterial when, and it is immater at what time they are called back now. But I wo like to have the opportunity to cross-examine, wh I deferred at the time. It was not my understand that I was going to do that the next morning. Tha (1520) known at all times I wanted to examine the

Mr. MacMahon: May I add, your Honor, that was not until last night that Mr. Fennelly inform us of his desire to call these witnesses who were h some four weeks ago.

The Court: Yes. He makes the point that he d